IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

FELIX GUZMAN RIVADENEIRA,)
Plaintiff,))
VS.) No. 15-2402-JDT-tmp
)
DEPARTMENT OF HOMELAND)
SECURITY, ET AL.,)
)
Defendants.)

ORDER DIRECTING PLAINTIFF TO COMPLY WITH 28 U.S.C. §§ 1915(a)(1)-(2) OR PAY \$400 CIVIL FILING FEE

On June 12, 2015, Plaintiff Felix Guzman Rivadeneira, prisoner number 122734, who is incarcerated at the McHenry County Jail in Woodstock, Illinois, filed a *pro se* civil complaint. (ECF No. 1.) However, Plaintiff neglected to submit either the \$400 civil filing fee required by 28 U.S.C. \$\\$ 1914(a)-(b) or an application to proceed *in forma pauperis*.

Under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. §§ 1915(a)-(b), a prisoner bringing a civil action must pay the filing fee required by 28 U.S.C. § 1914(a). Although the obligation to pay the fee accrues at the moment the case is filed, *see McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997), *partially overruled on other grounds by LaFountain v. Harry*, 716

¹ Twenty-eight U.S.C. § 1914(a) requires a civil filing fee of \$350. However, pursuant to § 1914(b), "[t]he clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States." The Judicial Conference has prescribed an additional administrative fee of \$50 for filing any civil case, except for cases seeking habeas corpus and cases in which the plaintiff is granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. Thus, if Plaintiff is granted leave to proceed *in forma pauperis*, he will not be liable for the additional \$50 fee.

F.3d 944, 951 (6th Cir. 2013), the PLRA provides the prisoner the opportunity to make a "down

payment" of a partial filing fee and pay the remainder in installments. *Id.* at 604. However, in order

to take advantage of the installment procedures, the prisoner must complete and submit to the district

court, along with the complaint, an in forma pauperis affidavit and a certified copy of his inmate

trust account statement for the last six months. 28 U.S.C. § 1915(a)(2).

Therefore, the Plaintiff is ORDERED to submit, within 30 days after the date of this order,

either the entire \$400 civil filing fee or a properly completed and executed application to proceed

in forma pauperis and a certified copy of his inmate trust account statement for the last six months.

The Clerk is directed to mail Plaintiff a copy of the prisoner *in forma pauperis* affidavit form along

with this order. If Plaintiff needs additional time to submit the necessary documents, he may, within

30 days after the date of this order, file a motion for an extension of time.

If Plaintiff timely submits the necessary documents and the Court finds that he is indeed

indigent, the Court will grant leave to proceed in forma pauperis and assess only a \$350 filing fee

in accordance with the installment procedures of 28 U.S.C. § 1915(b). However, if Plaintiff fails

to comply with this order in a timely manner the Court will deny leave to proceed in forma pauperis,

assess the entire \$400 filing fee from his inmate trust account without regard to the installment

payment procedures, and dismiss the action without further notice for failure to prosecute, pursuant

to Fed. R. Civ. P. 41(b). *McGore*, 114 F.3d at 605.²

IT IS SO ORDERED.

s/ James D. Todd

JAMES D. TODD

UNITED STATES DISTRICT JUDGE

² Even a voluntary dismissal by Plaintiff will not eliminate the obligation to pay the filing fee. *McGore*, 114 F.3d at 607; *see also In re Alea*, 286 F.3d 378, 381 (6th Cir. 2002).